

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Black Marlin Pipeline Company

Docket No. RP07-39-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND ESTABLISHING HEARING PROCEDURES

(Issued November 30, 2006)

1. On October 31, 2006, Black Marlin Pipeline Company (Black Marlin) filed primary and alternate tariff sheets¹ pursuant to section 4 of the Natural Gas Act (NGA), both proposing a general increase in Black Marlin's transportation rates. In this order, the Commission accepts and suspends Black Marlin's primary proposed tariff sheet to be effective May 1, 2007, subject to refund and the outcome of a hearing established herein. The Commission rejects the alternate proposed tariff sheet.

Background

2. Black Marlin is a jurisdictional offshore interstate pipeline company. The Black Marlin pipeline system includes a 16-inch diameter gas pipeline that extends from offshore Texas in High Island Area Block 136 to the pipeline's onshore terminal facility located at Texas City, Texas. A 16-inch diameter extension of this pipeline extends from High Island Block A-6 to a point of interconnection with the above-described pipeline in High Island Block 137. Black Marlin's current rates were made effective on January 1, 1999, following a "black box" settlement of Black Marlin's last rate case filed in Docket No. RP98-274-000.²

¹ Respectively, the primary and alternate tariff sheets are numbered Fifteenth Revised Sheet No. 4 and Alternate Fifteenth Revised Sheet No. 4.

² *Black Marlin Pipeline Co.*, 85 FERC ¶ 61,460 (1998).

Details of Filing

3. Black Marlin proposes to increase its rate for jurisdictional transportation service from \$0.09 to \$1.0622 per MMBtu, an increase of about 1200 percent. Black Marlin recognizes that the rate increase it proposes is extraordinary, but asserts that this increase is necessary because of the dramatic throughput decreases Black Marlin has experienced on its system since its last rate increase in 1999. Black Marlin states that production has dropped precipitously due to the natural depletion of the attached reserves and that as a result, Black Marlin is not recovering its costs. Black Marlin asserts that the under-recovery has become so severe that it is not even collecting its operating and maintenance costs. Black Marlin states that during the twelve-month period ending June 30, 2006, it incurred an operating loss of almost \$2 million (or approximately \$1.2 million excluding depreciation).

4. Black Marlin is calculating the cost of service for its proposed rate increase using the twelve-month base period ending June 30, 2006, incorporating adjustments made during a test period ending March 31, 2007. Black Marlin states that, aside from the proposed rate increase under existing rate schedules, it is not proposing any changes in rate design, depreciation rates, or any other changes in its tariff.

5. Black Marlin bases its rates on a proposed \$3 million cost of service, a decrease from the \$3.2 million cost of service underlying its currently effective rates. Black Marlin's cost of service includes \$1.9 million in operation and maintenance expenses, \$641,879 in depreciation and amortization expenses, \$98,840 in regulatory asset amortization, \$229,956 in taxes, and a \$218,271 return on rate base. Black Marlin's cost of service also includes \$126,220 in revenue credits.

6. Black Marlin offers firm transportation service under Rate Schedules T-1 and FTS and interruptible transportation service under Rate Schedule ITS. Black Marlin states that all existing shipper customers subscribe to only interruptible service under Rate Schedule ITS. Thus, Black Marlin contends that it is not guaranteed any minimum level of revenue that it would otherwise collect via reservation charges were it providing firm transportation service.

7. Black Marlin calculates its proposed rates using an average daily throughput of 7,652 MMBtu per day. Black Marlin states that its annual throughput has declined significantly from its average of 24,407,286 MMBtu for the years 1999 through 2004. In 2005, Black Marlin states that its annual throughput was only 5,280,587 MMBtu, further dropping to only 3,357,808 MMBtu during its base period. Black Marlin asserts that the significant decline in throughput predominantly relates to declines in deliverability and

the termination of production activity in certain production blocks attached to its system. Black Marlin does not expect new production to come online in the near or long term, nor does it expect that discounting its rates will encourage additional throughput.

8. Black Marlin requests that the Commission approve the proposed rate increase and make it effective, subject to refund, on December 1, 2006, after 30 days notice and a nominal suspension. Black Marlin notes that although it is generally Commission policy to suspend the effectiveness of rate increases for the full statutory period of five-months, a shorter suspension period may be warranted in circumstances where suspension for the maximum period might lead to harsh and inequitable results. Black Marlin states that such circumstances exist here, and cites its \$170,000 per month losses, which it claims will continue to grow.

9. Black Marlin filed an alternate tariff sheet in the event the Commission denies its request for a nominal suspension of its proposed rate increase to \$1.0622 per MMBtu. If the Commission does deny the proposed rate increase, Black Marlin requests that the Commission accept the alternative tariff sheet to permit: (1) a portion of its rate increase (\$0.6768 per MMBtu – a more than 700 percent increase) to become effective, subject to refund, on December 1, 2006, following 30 days notice and a nominal suspension period, and (2) the full rate increase to become effective, subject to refund, on May 1, 2007, following a maximum five-month suspension period. Black Marlin states that the implementation of this partial rate increase on December 1, 2006 will allow it an opportunity to recover its “out-of-pocket” expenses, which consist of operation and maintenance expenses, administrative and general costs, and non-income related taxes. In addition, Black Marlin requests that it be allowed to defer the booking of depreciation expense and negative salvage until May 1, 2007.

Notice of Filing, Interventions, Protest and Answer

10. Notice of Black Marlin’s filing was issued on November 2, 2006. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations, 18 C.F.R. § 385.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2006), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Apache Corporation (Apache) and ConocoPhillips Company (ConocoPhillips) filed a joint protest. Black Marlin filed an answer to the protest. Under Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), answers to protests are not accepted unless otherwise ordered by the decisional authority. The Commission will accept Black Marlin’s answer because it further clarifies the issues. The protest and answer are discussed below.

11. Apache and ConocoPhillips (Protestors) raise numerous concerns with Black Marlin's proposal. Protestors argue that longstanding Commission policy requires the Commission to suspend both the primary and alternative proposed interim rate increases for the full five-month statutory period under section 4 of the NGA. Protestors thus request five-month suspension of both proposed interim rate increases and ask that the Commission set all issues raised by Black Marlin's filing for a full evidentiary hearing.

12. Protestors point out that pipelines control the timing of their rate filings. They state that while Black Marlin alleges it has experienced a reduction in throughput since 2003, the pipeline elected not to file a new rate case until 2006. Protestors argue that the Commission should not reverse the impact on Black Marlin of its dilatory business decision at the expense of its captive ratepayers by suspending the proposed rates for less than five-months.

13. Protestors also argue that Black Marlin's proposed 13.8 percent rate of return is unjust, unreasonable, and excessive. To the extent it has throughput risk, Protestors assert, Black Marlin has not proven it is entitled to be rewarded with a premium return on equity, particularly given a proposed rate increase exceeding 1000 percent. Moreover, Protestors argue that Black Marlin's proposed 100 percent equity capital structure is inconsistent with the capital structure of its parent as well as the capital structures of the proxy group in its prepared testimony.

14. Furthermore, Protestors contend that Black Marlin's "out of pocket" expenses and its cost of service include allocations from its parent and affiliates that have not been shown to be just and reasonable. Protestors argue that the partial rate increase is based, in large part, not on out-of-pocket costs, but on internal, intracorporate overhead allocations from The Williams Companies and its affiliates to Black Marlin.

15. In its answer, Black Marlin contends that Protestors will not be harmed by the nominal suspension period requested because they have been "on notice" for approximately six months of Black Marlin's need for some form of substantial rate relief. Black Marlin states that it held discussions with Protestors in response to the drastic volume reductions in throughput it has been experiencing.

16. Black Marlin bases its request for a nominal suspension on the Commission's decision in *Valley Gas Transmission Inc.* to grant Valley Gas a nominal suspension period for its proposed rate increase because the pipeline experienced a 45 percent decrease in volume.³ Black Marlin states that its own annual volumes have declined

³ *Valley Gas Transmission, Inc.*, 11 FERC ¶ 61, 236 (1980), *order on reh'g*, 12 FERC ¶ 61,197 (1980) (*Valley Gas*).

from the 2004 throughput level by 74 percent for 2005, by 83 percent for the base period, and are projected to decline by 86 percent for the test period. Further, Black Marlin argues that its loss in throughput is not merely a matter of the pipeline's expectations as it was for Valley Gas, but that the loss in throughput has already occurred and is demonstrated by actual, historical data.

17. Black Marlin asserts that if a fully compensatory rate results in an uneconomic situation for Protestors, leading them to prefer discontinuing their production operations, then Protestors should make this known now. Black Marlin thus asserts that a nominal suspension period would force the shippers (*i.e.* Protestors) to promptly "vote with their feet" and decide whether they wish to continue production operations and pay a just and reasonable transportation rate that ends Black Marlin's financial losses, or decide that they find continued production uneconomical. Black Marlin does not want to subsidize shippers' production activities for an additional five-month period, particularly if at the end of the suspension period, the shippers then elect to shut down their operations.

Discussion

Primary Proposed Tariff Sheet

18. The Commission shares concerns that Protestors raise. The Commission finds that the primary proposed tariff sheet raises issues that require further investigation at a hearing before an Administrative Law Judge. Therefore, we will set these issues in the subject filing for hearing.

19. Based upon a review of the filing, we find that Black Marlin has not shown the proposed tariff sheet to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept Black Marlin's proposed Fifteenth Revised Sheet No. 4 for filing and suspend its effectiveness for the period set forth below, to become effective May 1, 2007, subject to the conditions set forth in this order.

20. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁴ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the

⁴ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

maximum period may lead to harsh and inequitable results.⁵ Such circumstances do not exist here. We note that Black Marlin has been aware of declining throughput for several years. If it wanted a rate increase to take effect sooner to reflect that declining throughput, it should have filed its proposal sooner. Thus, given the extraordinary 1200 percent rate increase proposed by Black Marlin, and the fact that the Protestors here request a full five-month suspension, we find the circumstances here distinguishable from *Valley Gas*, in which the proposed rate increase was less than 100 percent⁶ and was due to an unexpected loss of significant volumes of throughput, and Valley Gas's customers did not oppose reducing the suspension period to one day.⁷ Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on May 1, 2007, subject to refund and subject to the conditions set forth in the body of this order and the ordering paragraphs below.

Alternate Proposed Tariff Sheet

21. We will reject Black Marlin's alternate proposed tariff sheet. While the Commission has approved interim rate proposals pending final approval of settlement agreements,⁸ we have not done so with respect to alternate rate proposals for the interim five-month suspension period. Moreover, we find that Black Marlin has not shown the proposed tariff sheet to be just and reasonable, and that it may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Given the size of the alternate proposed rate increase (more than 700 percent), this proposal would also be subject to a five-month suspension and hearing. We therefore reject the alternate interim rate proposal and leave for hearing the issues raised by the primary rate proposal.

⁵ See *Valley Gas*, *supra* note 3 (one-day suspension).

⁶ 11 FERC ¶ 61,236 at 61,467 (increase from 13.78 cents per Mcf to 27.14 cents per Mcf).

⁷ 12 FERC ¶ 61,196 at 61,495.

⁸ See, e.g., *Maritimes & Northeast Pipeline, L.L.C.*, 115 FERC ¶ 61,176 (2006), *reh'g denied*, 117 FERC ¶ 61,143 (2006), and *Southern Natural Gas Co.*, 90 FERC ¶ 61,353 (2000).

The Commission orders:

(A) Fifteenth Revised Sheet No. 4 is accepted and suspended, to be effective May 1, 2007, subject to refund and conditions and subject to the outcome of the hearing established in this proceeding.

(B) Alternate Fifteenth Revised Sheet No. 4 is rejected.

(C) Pursuant to the authority of the NGA, particularly sections 4, 5, 8 and 15 thereof, a public hearing will be held in Docket No. RP07-39-000 concerning the lawfulness of Black Marlin's filing.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2006), must convene a prehearing conference in this proceeding to be held within twenty (20) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of establishment of a procedural schedule. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.